

§ 719.30

(3) That retained counsel must comply with the cost guidelines in subpart D of this part.

(4) That retained counsel must provide a certification concerning the costs submitted for reimbursement that is consistent with the certification in the Attachment to Appendix A to this part.

(5) That professional conflicts of interest issues must be identified and addressed promptly.

(e) Additional requirements may be included in an engagement letter based on the needs of the contractor or the office requiring the Department retained counsel.

Subpart D—Reimbursement of Costs Subject to This Part

§ 719.30 Is there a standard for determining cost reasonableness?

The standard for cost reasonableness determinations, one of the criteria for an allowability determination, is contained in the Federal Acquisition Regulation (FAR), at 48 CFR 31.201-3.

§ 719.31 How does the Department determine whether fees are reasonable?

In determining whether fees or rates charged by retained legal counsel are reasonable, the Department may consider:

(a) Whether the lowest reasonably achievable fees or rates (including any currently available or negotiable discounts) were obtained from retained legal counsel;

(b) Whether lower rates from other firms providing comparable services were available;

(c) Whether alternative rate structures such as flat, contingent, and other innovative proposals, were considered;

(d) The complexity of the legal matter and the expertise of the law firm in this area; and

(e) The factors listed in § 719.10(c).

§ 719.32 For what costs is the contractor, or Department retained counsel, limited to reimbursement of actual costs only?

All costs determined to be allowable are reimbursable for actual costs only,

10 CFR Ch. III (1–1–09 Edition)

with no overhead or surcharge adjustments.

§ 719.33 What categories of costs are unallowable?

(a) Specific categories of unallowable costs are contained in the cost principles at 48 CFR (FAR) part 31 and 48 CFR (DEAR) part 931 and 970.31. See also 41 U.S.C. 256(e).

(b) The Department does not consider for reimbursement any costs incurred for entertainment or alcoholic beverages. See 48 CFR (FAR) 31.205-14 and 31.205-51 and 41 U.S.C. 256(e).

(c) Costs that are customarily or already included in billed hourly rates are not separately reimbursable.

(d) Interest charges that a contractor incurs on any outstanding (unpaid) bills from retained legal counsel are not reimbursable.

§ 719.34 What is the treatment for travel costs?

Travel and related expenses must at a minimum comply with the restrictions set forth in 48 CFR (FAR) 31.205-46, or 48 CFR (DEAR) 970.3102-05-46, as appropriate, to be reimbursable.

§ 719.35 What categories of costs require advance approval?

Costs for the following require specific justification or advance written approval from Department counsel to be considered for reimbursement:

(a) Computers or general application software, or non-routine computerized databases specifically created for a particular matter;

(b) Charges for materials or non-attorney services exceeding \$5,000;

(c) Secretarial and support services, word processing, or temporary support personnel;

(d) Attendance by more than one person at a deposition, court hearing, interview or meeting;

(e) Expert witnesses and consultants;

(f) Trade publications, books, treatises, background materials, and other similar documents;

(g) Professional or educational seminars and conferences;

(h) Preparation of bills or time spent responding to questions about bills from either the Department or the contractor;